STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 15, 2002 **Agenda ID #1390**

TO: PARTIES OF RECORD IN APPLICATION 91-11-024 ET AL.

This is the draft decision of Administrative Law Judge (ALJ) Barnett. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ CAROL A. BROWN by KH
Carol A. Brown, Interim Chief
Administrative Law Judge

CAB:jyc

Attachment

Decision **DRAFT DECISION OF ALJ BARNETT (Mailed 11/15/02)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company For Authority to Increase its Rates And Charges for Electric, Gas, and Steam Service, Effective January 1, 1993. (U902-M)	Application 91-11-024 (Filed November 15, 1991)
In the Matter of the Application of Southern California Gas Company for Authority to Increase its Rates Effective August 1, 1999, in its Biennial Cost Allocation Proceeding. (U904 G)	Application 98-10-012 (Filed October 1, 1998)
In the Matter of the Application of San Diego Gas & Electric Company for Authority to Revise its Gas Rates Effective August 1, 1999, in its Biennial Cost Allocation Proceeding. (U902 G)	Application 98-10-031 (Filed October 15, 1998) (Not Consolidated)

DECISION DENYING THE PETITION FOR MODIFICATION OF DECISION (D.) 00-04-060 and D.00-12-058

On October 16, 2001, pursuant to Rule 47 of the Commission's Rules of Practice and Procedure, the Golden State Manufactured-Home Owners League, Inc. (GSMOL), petitioned to modify portions of D.00-04-060, issued April 20, 2000 in Application (A.) 98-10-012 and A.98-10-031, and D.00-12-058, issued December 21, 2000 in A.91-11-024. GSMOL is a statewide mobilehome owners association of approximately 28,500 members, with chapters in approximately 1,800 mobilehome parks (MHPs). The petitions seek to modify

those portions D.00-04-060 and D.00-12-058 which adopted a "Joint Recommendation on Master Meter Issues" (JR), an agreement signed by the Western Manufactured Housing Communities Association (WMA) and the San Diego Gas & Electric Company (SDG&E).

Petitioner alleges that the JRs adopted in both decisions establish a master meter discount based on WMA's calculations, and that WMA is now using the decisions to justify a rent increase in a MHP. Petitioner contends that the costs of providing submeter service to mobilehome sites and MHP common areas are quite substantial and are being included in rent, rather than as part of the submeter discount.[1] Petitioner states that the burden is all the more onerous because no mobilehome owner group or representative was involved in either negotiating the JR or participating in the hearings.

Petitioner recommends language of limitation to be inserted into both the text of the decisions and their findings of fact and conclusions of law. In regard to the JRs, petitioner would modify D.00-04-060 by adding, with other language, at page 127,

> "In regard to the undated JR between SDG&E and WMA, entitled 'Joint Recommendation on Master Meter Differential Issues,' with the sole exception of their agreement as to the amount of the space discount, which we adopt without change, we accept the recommendations of that JR as advisory only. Under no circumstances should our adoption of that JR be interpreted as authority or permission to base a MHP space rent increase upon any

[1] Searching for meaning through the maze of petitioner's prolix, redundant, ambiguous, and obscure prose, we believe the gravamen of the petition is that WMA members are raising mobilehome rents based on costs which should be considered only in determining the amount of the submeter discount.

> submetering costs, including without limitation, the costs of constructing and replacing the trenches, substructures and conduits, and protective structures for electric service to the submetered spaces.

And in the conclusions of law:

> "Conclusion of Law 9(a): As to our partial adoption of the JR between WMA and SDG&E (see Finding of Fact 134(a) and Decision, as modified, Slip at 127), nothing in that JR, its Exhibit 156, or elsewhere in this Decision should be interpreted as permission or authority to MHP owners to receive from their submeter service any cost which exceeds the CPUC-approved submeter discount and, since no costs have been excluded from that discount by this Decision, under Pub. Util. C. § 739.5, MHP tenants are to be charged for submetered gas and electric service no more than they would be charged as if directly served by the public utility."

Petitioner proposes similar language for D.00-12-058.

In Compliance with Rule 47(d) ("if more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision.") and Rule 47(e) ("…the petition must state specifically…why the petitioner did not participate in the proceeding earlier.") petitioner stated:

> "As to the reason why petitioner did not participate in A.98-10-012 (filed 10/1/98) or A.98-10-031 (filed 10/15/98) – the proceedings on which D.00-04-060 were based – one must appreciate the concept of "indifference." As proudly asserted in their June 4, 2001 letter, the parkowners are not hesitant to litigate before the Commission. This was the first "notice" given to GSMOL of D.00-04-060 and its purported relevance to MHP space rents."

> "As to the reason why petitioner did not participate in A.91-12-024 (filed 11/15/91) or the Rate Design Window Segment (filed 11/1/99) – the proceedings on which D.00-12-058 were based – one must appreciate the concept of "indifference." As proudly asserted

> in their June 4 letter, the parkowners are not hesitant to litigate before the Commission. However, there are many reasons why WMA enters into GRC's or other ratemaking or rulemaking proceedings and virtually none of them concern the tenants. Therein, the concept of "indifference" takes hold. See D.95-02-029, 58 CPUC2d 709, 711-13."
>
> "Regardless of the proceeding's title, when WMA – or any individual or group of parkowners – seek a ruling, such as anticipated in D.95-08-056, which might allow them to pass submetering costs onto rents, the Commission and its staff are obligated to notify the tenants, or known tenant organizations like GSMOL, to allow them to participate in any such proceeding."

SDG&E and WMA oppose the petition. They argue that first and fundamentally, GSMOL could have, but choose not to participate in the underlying case, i.e., SDG&E's Biennial Cost Allocation Proceeding (BCAP) filed on October 15, 1998. BCAPs have long been the Commission's chosen forum for addressing all manner of rate-setting issues, including issues concerning gas rates for MHPs and their tenants. The procedural schedule for SDG&E's BCAP is well known, having been established initially by the Commission in D.89-01-040. They point out that by its own admission, GSMOL is a sophisticated practitioner of long standing in matters before the Commission. The Petition acknowledges that "GSMOL has appeared or sponsored appearances before the Commission in numerous proceedings concerned with rates, charges and practices regarding submetered utilities in MHP [mobile home parks]" (Petition at p. 1). Given this history, SDG&E and WMA conclude that it is clear that GSMOL made a conscious and informed decision not to participate.

We agree with SDG&E and WMA. GSMOL would have us rewrite a recommendation that was adopted in a proceeding in which GSMOL could have

participated, but didn't. Further, we do not understand GSMOL's assertion that, "one must appreciate the concept of indifference" to understand why GSMOL did not participate in the SDG&E BCAP (Petition at p. 13). It is uncertain what GSMOL means by the term "indifference" in the context of this Petition. On its face, however, "indifference" does not provide a legally recognized excuse for a party's inattention to matters of concern. Both SoCalGas and SDG&E have current BCAPs pending (See A.01-09-024 and A.01-10-005, respectively). The issues raised by GSMOL should be raised in those applications. We note that those proceedings have been deferred until March 2003, which should allow GSMOL ample time to intervene.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) Barnett in this matter was mailed to the parties in accordance with Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Finding of Fact

Petitioner has not raised any issues of fact which require a change in D.00-04-060 and D.00-12-058.

Conclusion of Law

The petitions should be denied.

O R D E R

IT IS ORDERED that:

1. The petition for modification is denied.
2. Application (A.) 91-11-024, A.98-10-012, and A.98-10-031 are closed.

This order is effective today.

Dated _____, at San Francisco, California.